

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

ERIKA KLEIBRINK,

Plaintiff

v.

Case No.

**PIALA'S NURSERY AND GARDEN SHOP, INC., and
QUINN PIALA, Individually**

Defendants

COMPLAINT

Plaintiff, Erika Kleibrink, by and through her attorney, Robert M. Mihelich, of the Law Office of Robert M. Mihelich, alleges as follows:

INTRODUCTION

1. This is a claim by Plaintiff ("Ms. Kleibrink") against her former employers, the Defendants, Piala's Nursery and Garden Shop, Inc. ("Piala's Nursery") and its owner and President, Quinn Piala ("Mr. Piala") for unpaid overtime under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* Plaintiff seeks relief from the court in the form of unpaid wages, liquidated damages, attorneys' fees, and costs of suit.

JURISDICTION AND VENUE

2. This court has jurisdiction over this matter under 28 U.S.C. § 1331 and 29 U.S.C. § 2617(a). The Eastern District of Wisconsin is the proper federal venue for this action pursuant to 28 U.S.C. § 1391, in that during all times material hereto, Piala's Nursery and Mr. Piala employed Ms. Kleibrink and engaged in a business affecting commerce within the Eastern District of Wisconsin.

TRIAL BY JURY IS DEMANDED

3. Ms. Kleibrink demands that her claims be tried to a jury of her peers.

PARTIES

4. Ms. Kleibrink is an adult female and currently resides at 22210 SW Murdock Road, #C9, Sherwood, Oregon, 97140. At all times material hereto, Ms. Kleibrink was an employee of the Defendants Piala's Nursery and Mr. Piala as that term is defined pursuant to 29 U.S.C. § 201.
5. Defendant, Piala's Nursery & Garden Shop, Inc., is a Wisconsin corporation with its corporate headquarters and business located at S39 W27833 Genesee Road, Waukesha, Wisconsin 53189. At all times relevant hereto, the Defendant Piala's Nursery was an employer engaged in an industry affecting commerce, and has been an employer required to comply with the provisions of the FLSA pursuant to 29 U.S.C. §§ 201, *et seq.*
6. The Defendant, Quinn Piala, is the President and an owner of Piala's Nursery and is involved in the day-to-day business operations of Piala's Nursery. Among other things, Defendant Piala has the authority to hire and fire employees, the authority to direct and supervise the work of employees, the authority to sign on the company's checking accounts, including payroll accounts, and he has the authority to participate in decisions regarding employee compensation and capital expenditures.
7. At all times relevant hereto, Defendant Piala was Ms. Kleibrink's "employer" as that term is defined by the FLSA, 29 U.S.C. 203(d).

8. Upon information and belief, Defendant Quinn resides and is domiciled in this judicial district.

FACTUAL ALLEGATIONS

9. Píala's Nursery provides landscape services including design, construction, garden maintenance, and also operates a retail nursery.
10. Plaintiff began working for Píala's Nursery on or around May 9, 2016 in the position of Landscape Design Assistant. Plaintiff's job duties consisted of answering telephones, scheduling appointments, site measuring, completing rough drafts of plans or site estimates and working as a retail clerk/helper. Throughout her employment Ms. Kleibrink was intentionally misclassified by the Defendants as a "salaried" employee.
11. Plaintiff worked well over 40 hours per week, including work performed on weekends.
12. Plaintiff is informed and believes that Píala's Nursery maintained a policy and practice of failing to pay overtime wages to employees.

Violation of the Fair Labor Standards Act - Overtime Wages

13. Plaintiff re-alleges the allegations set forth above.
14. Ms. Kleibrink worked for Defendants and was an "employee" of Defendants as defined by Section 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1).
15. Defendants were Ms. Kleibrink's "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

16. During the course of her employment by Defendants, Ms. Kleibrink was not exempt from the overtime wage provisions of the Fair Labor Standards Act, 29 U.S.C. § 207.
17. Ms. Kleibrink was directed by Defendants to work, and did work, in excess of 40 hours per week.
18. Pursuant to 29 U.S.C. § 207, for all weeks during which Ms. Kleibrink worked in excess of 40 hours, she was entitled to be compensated at a rate of one and one-half times her hourly rate.
19. The Defendants did not compensate Ms. Kleibrink at a rate of one and one-half times her hourly rate for the time that she worked in excess of 40 hours in individual workweeks.
20. The Defendants' failure to pay Ms. Kleibrink overtime wages for time worked in excess of 40 hours per week was a violation of the Fair Labor Standards Act, 29 U.S.C. § 207.
21. The Defendants' failure and refusal to pay overtime wages for time worked in excess of 40 hours per week was a willful violation of the Fair Labor Standards Act, 29 U.S.C. § 207.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against both Defendants, jointly and severally, as follows:

- A. Judgment declaring that the actions of the Defendants described herein have violated the Plaintiff's FLSA rights under 29 U.S.C. §§ 201, *et seq.*;

- B. Judgment against Defendants awarding damages for all wages, salary, employment benefits and other compensation lost by reason of the violation;
- C. Judgment against the Defendants awarding Plaintiff her costs, disbursements, prejudgment interest, and actual attorney's fees incurred in prosecuting this claim, together with interest on said attorney's fees;
- D. Liquidated damages;
- E. Pre- and post-judgment interest;
- F. Injunctive and declaratory relief to prohibit the unlawful acts, policies, and practices alleged herein; and
- G. Any other relief this Court deems necessary and just.

Dated this 8th day of January 2018.

s/ Robert M. Mihelich
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